IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.270 OF 2004

M/s.Oudh Services Station. ... Petitioner.

vs.

TATA Finance Limited & ors. ... Respondents.

Mr.S.S.Dube, for Petitioner.

Ms.Pooniwala i/b. Y.R.Shah, for Respondents.

CORAM: D.K.DESHMUKH,J.

DATED: 26th April,2005

P.C.:-

1. By this petition filed under section 34 of the Arbitration and Conciliation Act,1996, the petitioner challenges the Award made by the Sole Arbitrator dated 18th June,2003. According to the petitioner, after receiving the notice from the learned Arbitrator, it has raised objection to the jurisdiction of the learned Arbitrator and had asked for the copies of agreements which are subject matter of the arbitration proceedings. Without supplying copies of the

agreements and without giving any opportunity of filing reply on merit, according to the petitioner, the learned Arbitrator has made the Award, and therefore, the Award is liable to be set aside.

2. On behalf of the respondents, it is submitted that the petitioner was served with the statement of claim in February,2002, the petitioner was also served with the compilation of documents on 28.6.2002. This compilation of documents contained the copies of the agreements which were demanded by the petitioner. The statement made on behalf of the respondents that the petitioner was served with the copy of statement of claim, and copies of agreements were also served on the petitioner, is denied by the petitioner.

3. I have heard learned Counsel for both the sides. Now first examining the grievance made by the petitioner that it was not served with the statement of claim, it is found that the grievance made by the petitioner has no substance. According to the respondents, the statement of claim was sent to the petitioner pursuant to the direction contained in the minutes of meeting of the Arbitrator dated 8.2.2002. Admittedly the copy of these minutes was received by the petitioner. The minutes contained direction to the respondents that it should send copy of the statement of claim to all the parties.. Had the petitioner not received the copy of the statement of claim, on finding that in the minutes there is direction of supply of copy of the statement of claim, it would have made grievance about it in the application which it has filed before the learned

Arbitrator on 27.5.2002. But in the application, there is no grievance made about not being supplied with the statement of claim. It is further to be seen here that in the correspondence made on behalf of the petitioner, there is no grievance made that a copy of the statement of claim has not been served on the petitioner. In my opinion, therefore, the petitioner cannot be believed that it was not served with the statement of claim. In my opinion, the petitioner has come to the Court with false case that the Award has been made without serving the statement claim on the petitioner. It is further pertinent to note here that the statement of claim and the compilation of documents were sent to the petitioner by registered post acknowledgment due, and the acknowledgment, a copy of which has been produced on record, shows that they were received by the petitioner. Thus, the presumption arises that the statement of claim and the compilation of documents were served on the petitioner. It is pertinent to note here that so far as the preliminary objection that was raised by the petitioner is concerned, that was most flimsy preliminary objection and that has been dealt with by the learned Arbitrator in the Award and there are no submissions made before me in relation to that objection.

4. It is further pertinent to note that the petitioner was claiming change of venue of arbitration on the ground that the proprietor of petitioner is handicapped. In my opinion, that cannot be the sufficient ground for changing the venue of the arbitration. Taking overall view of the matter therefore, in my opinion, though the petitioner was served with the statement of claim and

compilation of documents, it has chosen not to file its reply to the statement of claim and therefore, it cannot take any exception to the Award that has been made by the Arbitrator. The petition therefore, has no substance and is dismissed.